

HOWARD SPORTS-TOPSHAM, INC., et al.

v.

ONEBEACON INSURANCE GROUP

Argued March 11, 2004
Decided March 29, 2004

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER,
CALKINS, and LEVY, JJ.

MEMORANDUM OF DECISION

Plaintiffs Howard Sports-Topsham, Inc., and Lake Pemaquid, Inc., appeal from a summary judgment in favor of OneBeacon Insurance Group entered by the Superior Court (Lincoln County, *Marden, J.*). Howard Sports contends that a cousin of the owner of Howard Sports, who had sold equipment to Howard Sports, had not been paid, and then removed some of that equipment from Howard Sports, committed a theft covered by Howard Sports' insurance policy with OneBeacon.

When there is no dispute that the equipment in question had not been properly paid for, and the equipment was removed by the individual to whom the payments were owed, neither a theft nor a disappearance is established under the insurance policy. *See Talasek v. Travelers Fire Ins. Co.*, 242 F.2d 748, 749 (5th

Cir. 1957); *Sanders v. Humphrey*, 720 F. Supp. 575, 577 (S.D. Miss. 1989); *State Farm Fire & Cas. Co., v. Switzer*, 520 S.W.2d 245, 246-47 (Ark. 1975).

The entry is:

Judgment affirmed.

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